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In re Application of
GOODWIN et al
Application No.: 09/647,661
PCT No.: PCT/US99/07549
Int. Filing Date: 06 April 1999
Priority Date: 06 April 1998
Attorney's Docket No.: DALHO1270-2
For: NITROREDUCTASE AND THERAPEUTIC
USES THEREFOR

DECISION ON

PETITION

UNDER 37 CFR 1.181

This decision is in response to the "facsimile transmission" faxed on 8 November 2001, which is being treated as a petition under 37 CFR 1.181, requesting the withdrawal of the holding of abandonment mailed on 27 September 2001 because the response to the "Notification of Missing Requirements" was timely.

BACKGROUND

On 30 September 2000, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a copy of the international application, and a postcard return. Applicant, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter.

On 31 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PUT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date" must be submitted within one month from its 31 October 2000 date of mailing or by 31 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application. In addition, the surcharge for providing the oath or declaration later than the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e)).

On 31 January 2001, applicants filed a "Response To Notice To File Missing Parts." It included, inter alia, an executed declaration for patent application (3 pgs), power of attorney by assignee (2 pgs), and a petition for extension of time (2 months (2 pgs)). This response

was submitted within the time period of response since petitioner had petition for extension of time of two (2) months extending the period of response to January 31, 2001.

On 27 July 2001, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PUT/DO/EO/909) which indicated that applicant had failed to respond to the "NOTIFICATION OF MISSING REQUIREMENTS (PUT/DO/EO/905); accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 27 July 2001, petitioner submitted a facsimile "facsimile transmission" on 8 November 2001 of the previously submitted documents of January 31, 2001. A review of the file revealed that the "RESPONSE TO NOTICE TO FILE MISSING PARTS" submitted on 31 January 2001 was in the file.

DISCUSSION

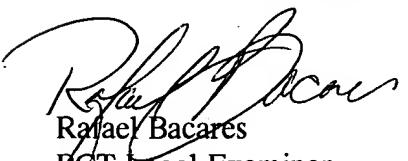
In view of the above, the applicant's response is considered timely. Accordingly, the instant application has been improperly abandoned. It is noted that the Declaration for Patent Application and Power of Attorney by Assignee were inadvertently stamped with a date of 31 February 2001. Such date does not exist and in view of the date stamped postcard receipt which accompanied the present submission the correct date of receipt of these documents is 31 January 2001.

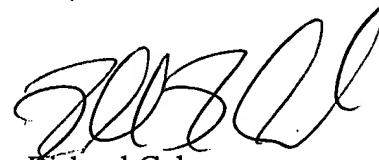
CONCLUSION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is GRANTED.

The NOTIFICATION OF ABANDONMENT, mailed 27 July 2001 has been VACATED.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PUT/DO/EO/903) identifying a 35 U.S.C. § 371 date of 31 January 2001.


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